

CHAPTER 19-20.1 FERTILIZER AND SOIL CONDITIONER LAW

19-20.1-01. Enforcing official.

This chapter must be administered by the agriculture commissioner, hereinafter referred to as the commissioner.

19-20.1-02. Definitions of words and terms.

When used in this chapter:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.
3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.
4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.
5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends fertilizer, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by the commissioner by rule.
8. "Fertilizer material" means a fertilizer which:
 - a. Contains no more than one of the primary plant nutrients;
 - b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
 - c. Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
9. "Foliar fertilizer" means a fertilizer designed and ordinarily applied directly to growing plant foliage to stimulate further growth.
10. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis". "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
11. "Inert" means any ingredient not active.
12. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
13. "Label" means all written, printed, or graphic matter upon or accompanying any fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting the sale thereof.
14. "Licensee" means any person licensed by the commissioner to distribute a fertilizer, soil amendment, or plant amendment.
15. "Manipulated" means fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
16. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.

17. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, soil amendments, or plant amendments.
18. "Official sample" means any sample of fertilizer, soil amendment, or plant amendment, taken by the commissioner and designated as "official" by the commissioner.
19. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
20. "Percent" or "percentage" means the percentage by weight.
21. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
22. "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
23. "Primary plant nutrients" means nitrogen, phosphate, and potash.
24. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.
25. "Sell" when applied to fertilizers, soil amendments, or plant amendments includes:
 - a. The act of selling or transferring ownership.
 - b. The offering and exposing for sale, exchange, or distribution.
 - c. Giving away.
 - d. Receiving, accepting, holding, or possessing for sale, exchange, or distribution.
26. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
27. "Soil amendment" means any substance which is intended to improve the characteristics of the soil except fertilizers, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term includes fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
28. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
29. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

19-20.1-03. Registration.

Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by a fee of fifty dollars. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations cover a two-year period beginning July first and ending June thirtieth of every even-numbered year. Distribution of fertilizer products without prior registration or renewal received after July thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment that is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

19-20.1-03.1. License required - Penalty.

A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. However, a distributor's

license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars. A license covers a two-year period beginning July first and ending June thirtieth of every even-numbered year. License renewal applications received after July thirty-first may be assessed a penalty fee of twenty dollars. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

19-20.1-03.2. Proof of effectiveness.

The commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The commissioner may accept or reject other sources of proof as additional evidence.

19-20.1-03.3. Protected information.

In submitting data required by this chapter, the applicant may clearly mark any portions that in the applicant's opinion are trade secrets or commercial or financial information and submit the marked material separately from other material.

After consideration of the applicant's request, the commissioner may decide not to allow the information to become public that the commissioner determines to contain or relate to trade secrets or to commercial or financial information obtained from an applicant. If necessary, information relating to formulas of products may be revealed to a state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the commissioner. If the commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure, the commissioner shall notify the applicant or registrant by certified mail. The commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may begin an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

19-20.1-03.4. Guaranteed analysis.

Until the commissioner prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed analysis must be claimed in the following order and form:

1. Total Nitrogen (N) _____ percent
Available Phosphate (P_2O_5) _____ percent
Soluble Potash (K_2O) _____ percent
2. For unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.
3. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the commissioner. The guarantees for any other nutrients must be expressed in the form of the element. The sources of other nutrients, including oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

4. The commissioner may, by rule, require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

19-20.1-04. Labeling.

1. Any fertilizer, soil amendment, or plant amendment distributed in this state in containers must have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by the commissioner.
2. If distributed in bulk, a written or printed statement showing the net weight, brand and grade, guaranteed analysis, name and address of the distributor, and the sources from which the nitrogen, phosphorus, and potassium are derived must accompany delivery and be supplied to the purchaser at time of delivery.
3. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing must be labeled to show the net weight, guaranteed analysis or number of pounds [kilograms] of each plant nutrient it contains, and the name and address of the distributor.
4. The commissioner may require the labels of specialty fertilizer sold in packages of fifty pounds [22.68 kilograms] or more, or sold in bulk, to contain the prominent statement "Not intended for farm use".

19-20.1-05. Labeling soil conditioners.

Repealed by S.L. 1977, ch. 198, § 18.

19-20.1-05.1. Fertilizer in bulk storage.

Fertilizer in bulk storage must be identified with a label attached to the storage bin or container stating the appropriate grade or guaranteed analysis.

19-20.1-06. Inspection fees and tonnage reports.

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the

amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

19-20.1-07. Inspection fees and tonnage reports.

When more than one person is involved in the distribution of a registered product, the last person who has the product registered under section 19-20.1-03 and who distributes to a nonregistrant is responsible for reporting the tonnage and paying the inspection fee. The commissioner may verify the records on which the statement of tonnage is based.

19-20.1-08. Inspection, sampling, analysis.

The commissioner shall sample, inspect, make analyses of, and test fertilizers, soil amendments, and plant amendments distributed within this state at any time and place and to such an extent as the commissioner may deem necessary to determine whether these products are in compliance with this chapter. The commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to products subject to this chapter and the rules adopted under this chapter. The methods of analysis and sampling must be those adopted by the commissioner from sources such as the A.O.A.C. journal. In cases not covered by these methods, or if methods are available in which improved applicability has been demonstrated, the commissioner may adopt appropriate methods from other sources.

In sampling a lot of fertilizer, a single package may constitute the official sample. The commissioner, in determining for administrative purposes whether any fertilizer, soil amendment, or plant amendment is deficient, must be guided solely by the official sample obtained and analyzed by the commissioner. The results of official analysis of any fertilizer, soil amendment, or plant amendment that has been found to be subject to penalty or other legal action must be forwarded by the commissioner to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the commissioner, the report becomes official. Official samples found to be deficient must be retained by the commissioner for thirty days from issuance of the analytical report. Upon request the commissioner shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

19-20.1-09. Minimum plant food content.

Repealed by S.L. 1977, ch. 198, § 18.

19-20.1-10. Misbranding.

A fertilizer, soil amendment, or plant amendment is misbranded if false or misleading statements concerning the product are disseminated in any manner or by any means, if it carries a false or misleading statement on the label or labeling, if it is distributed under the name of another product, if it is not labeled as required by section 19-20.1-04 and in accordance with rules adopted under this chapter, and if it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by rule of the commissioner. In adopting these rules the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. It is unlawful to distribute a misbranded fertilizer, soil amendment, or plant amendment.

19-20.1-11. Publications.

The commissioner may publish in the forms the commissioner determines proper:

1. Information concerning the distribution of fertilizers, soil amendments, and plant amendments.
2. Results of analyses based on official samples of fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

19-20.1-12. Rules.

For the enforcement of this chapter, the commissioner is authorized to adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, soil amendments, and plant amendments as necessary to carry into effect the full intent and meaning of this chapter.

19-20.1-13. Deficiencies.

1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.
2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. For the purpose of determining the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.
4. If any fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the commissioner to be short in weight, the registrant of the product shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.

19-20.1-14. Cancellation of registrations.

The commissioner may cancel the registration of any brand of fertilizer, soil amendment, or plant amendment and may cancel the license of any distributor or may refuse to register any brand of fertilizer, soil amendment, or plant amendment or may refuse to license any distributor as herein provided, upon satisfactory evidence that the registrant, licensee, or distributor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules adopted under this chapter. No registration or license may be revoked or refused without opportunity for hearing given by the commissioner.

19-20.1-15. Stop-sale orders.

The commissioner may issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, soil amendment, or plant amendment and an order to hold at a designated place when the commissioner finds the fertilizer, soil amendment, or plant amendment is being offered or exposed for sale in violation of this chapter or a rule adopted under this chapter until the law or rule has been complied with and the fertilizer, soil amendment, or plant amendment is released in writing by the commissioner or the violation has been otherwise legally disposed by written authority. The commissioner shall release the fertilizer, soil amendment, or plant amendment so withdrawn when the requirements of this chapter and the rules adopted under this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

19-20.1-16. Seizure, condemnation, and sale.

Any lot of fertilizer, soil amendment, or plant amendment not in compliance with this chapter and the rules adopted under this chapter is subject to seizure on complaint of the commissioner to the district court in the county in which the fertilizer, soil amendment, or plant amendment is located. In the event the court finds the fertilizer, soil amendment, or plant amendment to be in violation of this chapter or a rule adopted under this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the fertilizer, soil amendment, or plant amendment and the laws of the state. In no instance may the disposition of the fertilizer, soil amendment, or plant amendment be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer, soil amendment, or plant amendment or for permission to process or relabel the fertilizer, soil amendment, or plant

amendment to bring it into compliance with this chapter and the rules adopted under this chapter.

19-20.1-17. Violations - Penalty.

1. If it appears from the examination of any fertilizer, soil amendment, or plant amendment that any of the provisions of this chapter or the rules adopted under this chapter have been violated, the commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken. Any person so notified must be given opportunity to be heard under rules adopted by the commissioner. If it appears after the hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules adopted under this chapter have been violated, the commissioner may certify the facts to the proper prosecuting attorney.
2. Any person convicted of violating this chapter or the rules adopted under this chapter or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty in connection with this chapter or the rules adopted under this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent must be accepted as prima facie evidence of the composition.
3. Nothing in this chapter may be construed as requiring the commissioner to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when the commissioner believes that the public interests will be best served by a suitable notice of warning in writing.
4. It is the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

19-20.1-18. Exchanges between manufacturers.

Nothing in this chapter may be construed to restrict or avoid sales or exchanges of fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators who mix fertilizer materials, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, soil amendments, or plant amendments to manufacturers or manipulators who have registered their brands as required by this chapter.